

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

HAYDEN KHO, JR., et al.,

Plaintiff(s),

v.

JIANGTIAN SUN, et al.,

Defendant(s).

Case No. 2:19-CV-596 JCM (DJA)

ORDER

Presently before the court is plaintiffs Hayden Kho, Jr. and Victoria G. Belo's ("plaintiffs") motion for summary judgment. (ECF No. 24). Defendants Jiangtian Sun and Sun Timepiece Trade, LLC (collectively, "defendants") did not respond and the time to do so has passed.

**I. Background**

This action arises from defendants' failure to deliver two Rolex watches. *See* (ECF No. 1). In spring 2018, plaintiffs agreed to purchase two limited edition Rolex watches from defendants for \$294,550.00. *Id.* To secure the purchase, plaintiffs paid a \$235,640.00 deposit with the understanding that they would pay the remaining balance upon delivery of the watches. *Id.*

By late September 2018, defendants had not delivered the watches. *Id.* When plaintiffs inquired about the status of the order, defendants represented that they were expecting delays because their distributor "just got [bought] out and [was] going through a transition." *Id.* In December 2018, plaintiffs again asked defendants about the watches. *Id.* Defendants told plaintiffs that they did not have the watches, but they were "on top of it." *Id.* In February 2019, defendants advised plaintiffs that there was a mix up with the shipments but that the watches

1 were coming. *Id.* Thereafter, defendants ceased all communication with plaintiffs and failed to  
 2 deliver the watches or refund the deposit. *Id.* at 4–5.

3 On April 5, 2019, plaintiffs filed a complaint alleging (1) conversion; (2) intentional and  
 4 fraudulent misrepresentation; (3) unjust enrichment; and (4) breach of contract. (ECF No. 1).  
 5 The court dismissed the misrepresentation claim, (ECF No. 16), and plaintiffs now move for  
 6 summary judgment. (ECF No. 24).

## 7 **II. Legal Standard**

8 The Federal Rules of Civil Procedure allow summary judgment when the pleadings,  
 9 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if  
 10 any, show that “there is no genuine dispute as to any material fact and the movant is entitled to a  
 11 judgment as a matter of law.” Fed. R. Civ. P. 56(a). A principal purpose of summary judgment  
 12 is “to isolate and dispose of factually unsupported claims.” *Celotex Corp. v. Catrett*, 477 U.S.  
 13 317, 323–24 (1986).

14 For purposes of summary judgment, disputed factual issues should be construed in favor  
 15 of the nonmoving party. *Lujan v. Nat’l Wildlife Fed.*, 497 U.S. 871, 888 (1990). However, to  
 16 withstand summary judgment, the nonmoving party must “set forth specific facts showing that  
 17 there is a genuine issue for trial.” *Id.*

18 In determining summary judgment, a court applies a burden-shifting analysis. “When the  
 19 party moving for summary judgment would bear the burden of proof at trial, it must come  
 20 forward with evidence which would entitle it to a directed verdict if the evidence went  
 21 uncontroverted at trial. In such a case, the moving party has the initial burden of establishing the  
 22 absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp. Brokerage*  
 23 *Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted).

24 By contrast, when the nonmoving party bears the burden of proving the claim or defense,  
 25 the moving party can meet its burden in two ways: (1) by presenting evidence to negate an  
 26 essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving  
 27 party failed to make a showing sufficient to establish an element essential to that party’s case on  
 28 which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If

1 the moving party fails to meet its initial burden, summary judgment must be denied and the court  
 2 need not consider the nonmoving party's evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S.  
 3 144, 159–60 (1970).

4 If the moving party satisfies its initial burden, the burden then shifts to the opposing party  
 5 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*  
 6 *Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party need not establish a dispute of  
 7 material fact conclusively in its favor. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*,  
 8 809 F.2d 626, 631 (9th Cir. 1987). It is sufficient that “the claimed factual dispute be shown to  
 9 require a jury or judge to resolve the parties’ differing versions of the truth at trial.” *Id.*

10 In other words, the nonmoving party cannot avoid summary judgment by relying solely  
 11 on conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d  
 12 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and  
 13 allegations of the pleadings and set forth specific facts by producing competent evidence that  
 14 shows a genuine issue for trial. *See Celotex*, 477 U.S. at 324.

15 At summary judgment, a court’s function is not to weigh the evidence and determine the  
 16 truth, but to determine whether a genuine dispute exists for trial. *See Anderson v. Liberty Lobby,*  
 17 *Inc.*, 477 U.S. 242, 249 (1986). The evidence of the nonmovant is “to be believed, and all  
 18 justifiable inferences are to be drawn in his favor.” *Id.* at 255. But if the evidence of the  
 19 nonmoving party is merely colorable or is not significantly probative, summary judgment may be  
 20 granted. *See id.* at 249–50.

### 21 **III. Discussion**

22 Defendants do not oppose plaintiffs’ motion for summary judgment. But “summary  
 23 judgment cannot be granted by default, even if there is a *complete* failure to respond to the  
 24 motion.” Fed. R. Civ. P. 56, 2010 cmt. to subdivision (e) (emphasis added). The court may  
 25 grant summary judgment only if “the motion and supporting materials . . . show that the movant  
 26 is entitled to it.” Fed. R. Civ. P. 56(e). And this principle is borne out by Ninth Circuit case law  
 27 holding that a court cannot grant a summary judgment motion merely because it is unopposed.  
 28 *Martinez v. Stanford*, 323 F.3d 1178, 1182 (9th Cir. 2003). Thus, even without an opposition,

1 the court must apply standards consistent with Federal Rule of Civil Procedure 56 to determine if  
 2 the moving party's motion demonstrates that there is no genuine issue of material fact and  
 3 judgment is appropriate as a matter of law. *Id.*

4 Plaintiffs' complaint includes claims for conversion and breach of contract. (ECF No. 1  
 5 at 5–6). First, in order to establish a claim of conversion in Nevada, plaintiffs must prove that  
 6 defendants "wrongfully exerted dominion over personal property in denial of, or inconsistent  
 7 with, title or rights therein or in derogation, exclusion, or defiance of such rights." *Winchell v.*  
 8 *Schiff*, 124 Nev. 938, 944 (2008). Further, "[l]iability for conversion is predicated upon general  
 9 intent, which does not require wrongful intent and is not excused by care, good faith, or lack of  
 10 knowledge." *Id.*

11 Plaintiffs claim that defendants wrongfully converted their funds in the amount of  
 12 \$235,640.00. "A specific and identified amount of money can form the basis of a conversion  
 13 claim." *Ross v. U.S. Bank Nat. Ass'n*, 542 F. Supp. 2d 1014, 1024 (N.D. Cal. 2008). It is  
 14 undisputed that plaintiffs paid defendants a specific amount of money, \$235,640.00, via two wire  
 15 transfers on May 9, 2018, and May 17, 2018, as a deposit for two Rolex watches. (ECF No. 24  
 16 at 8). Additionally, it is undisputed that defendants failed to provide the watches to plaintiffs and  
 17 have continued to deprive plaintiffs of their money. *Id.*

18 Here, defendants wrongfully exerted dominion over plaintiffs' personal property when  
 19 defendants failed to deliver the watches and failed to return plaintiffs' funds. *Id.* Further,  
 20 defendants' continued retention of the deposit has denied plaintiffs of those funds entirely. *Id.* at  
 21 7. Thus, the court finds that plaintiffs have successfully proven a claim of conversion.

22 Next, the court turns to plaintiffs' claim of breach of contract. "A breach of contract may  
 23 be said to be a material failure of performance of a duty arising under or imposed by agreement."  
 24 *Bernard v. Rockhill Dev. Co.*, 734 P.2d 1238, 1240 (Nev. 1987). Thus, "Nevada law requires the  
 25 plaintiff in a breach of contract action to show (1) the existence of a valid contract, (2) a breach  
 26 by the defendant, and (3) damage as a result of the breach." *Saini v. Int'l Game Tech.*, 434 F.  
 27 Supp. 2d 913, 919–20 (D. Nev. 2006) (citing *Richardson v. Jones*, 1 Nev. 405 (Nev. 1865)).  
 28

1 It is undisputed that plaintiffs and defendants had a valid contract. “Basic contract  
2 principles require, for an enforceable contract, an offer and acceptance, meeting of the minds,  
3 and consideration.” *May v. Anderson*, 121 Nev. 668, 672 (2005). Here, defendants offered to sell  
4 plaintiff the watches for \$294,550.00. (ECF No. 24 at 9). Plaintiffs accepted the offer and  
5 provided consideration via their deposit of \$235,640.00. *Id.*

6 Plaintiffs performed their contractual obligations, as evidenced by their deposit. *Id.* at 13.  
7 However, defendants breached by failing to perform on a material part of the contract: delivering  
8 the watches to plaintiffs. *Id.* This breach resulted in damages to plaintiffs in the amount of  
9 \$235,640.00. *Id.* Thus, plaintiffs have successfully proven a claim of breach of contract.

10 Accordingly, plaintiffs’ motion for summary judgment on their claims for conversion and  
11 breach of contract are granted. But, because the court finds that plaintiffs prevail on their breach  
12 of contract, they cannot sustain their unjust enrichment claim as a matter of law. See *Lipshie v.*  
13 *Tracy Investment Co.*, 566 P.2d 819, 824 (Nev. 1977). Therefore, the court dismisses plaintiffs’  
14 unjust enrichment claim *sua sponte*.

15 Additionally, the court dismissed plaintiffs’ claim of intentional and fraudulent  
16 misrepresentation for failure to plead with sufficient particularity. (ECF No. 16). Plaintiffs did  
17 not file an amended complaint or otherwise revive this claim. Therefore, the court denies  
18 plaintiffs’ motion as it pertains to their misrepresentation claim.

#### 19 **IV. Conclusion**

20 The court grants plaintiffs’ motion as to their conversion and breach of contract claims.  
21 The court denies the motion as it pertains to the previously-dismissed misrepresentation claim.  
22 The court denies the motion for summary judgment on the unjust enrichment claim and, instead,  
23 dismisses it *sua sponte*.

24 Accordingly,

25 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiffs’ motion for  
26 summary judgment (ECF No. 24) be, and the same hereby is, GRANTED, in part, and DENIED,  
27 in part, consistent with the foregoing.

DATED June 22, 2020.

James C. Mahan  
UNITED STATES DISTRICT JUDGE